GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 51/Lab./AIL/J/2013, dated 12th April 2013)

NOTIFICATION

Whereas, an award in I.D. No. 33/2008, dated 13-12-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the President, Swadeshi Panchalai Thozhilalar Urimai Padukapu Sangam, Puducherry and the General Manager Swadeshi Cotton Mills, Puducherry over the claim for change of date of joining of 25 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

———

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. Mohandass, m.a., m.l.,
Presiding Officer, Labour Court,
Puducherry.

Thursday, the 13th day of December 2012

I.D. No. 33/2008

The President,
Swadeshi Panchalai Thozhilalar Urimai
Padukapu Sangam,
Puducherry . . Petitioner

Vs.

The General Manager,
Swadeshi Cotton Mills,
Puducherry . . Respondent

This industrial dispute coming on 7-12-2012 for final hearing before me in the presence of Thiru K. Velmurugan, Advocate for the petitioner, Thiru K. Ravikumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following :

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 151/AIL/Lab./J/2008, dated 13-10-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.,*

1. Whether the dispute raised by Swadeshi Panchalai Thozhilalar Urimai Padukapu Sangam, Puducherry for change of date of joining of 25 workers Thiruvalargal (1) R. Balasegar, (2) S. Srinivasan, (3) S. Nagasundaram, (4) P. Paramasivam, (5) M. Kalyanasundaran, (6) M. Thanappan, (7) V. Kothandapani, (8) V. Veeraselvam, (9) R. Munisamy, (10) R. Janakiraman, (11) K. Neelakandan, (12) M. Patturaja Samuel, (13) S. Kasinathan, (14) K. Kalianam, (15) E. Kalidass, (16) M. Chandirasegaran, (17) P. Vinayagamurthy, (18) S. Natarajan, (19) K. Mannakatty, (20) T. Veerappan, (21) M. Ramesh, (22) M. Jayavelu, (23) K. Udayakumar, (24) K. Kaliamurthy and (25) S. Subramanian is justified or not?

2. To what relief, they are entitled to? Give appropriate directions.

The petitioner, in his claim statement has averred as follows :

At the time of appointment, the petition mentioned workmen were paid ₹ 8 per day and subsequently it was raised to ₹ 12 per day and finally at ₹ 24 per day. The said workmen worked continuously for more than 240 days of every year in the respondent mills without any sort of black mark whatsoever. As such ranging from the year 1986 to 1988, the employees were covered under the ESI Scheme and ESI Identity Card also issued to them in this regard. From the date on which the ESI coverage was extended to them, ESI contribution was deducted from their salary. On 1-4-1991 the above employees were covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1956 and separate Provident Fund account number was given to each and every employee and thereafter Provident Fund Contributions were deducted from the salary of the employees. On 26-5-1993 the respondent management confirmed the services of the abovesaid 25 workmen. However, the date of joining the said workmen were entered into the service records as 26-5-1993 instead of their respective original date of appointment in the respondent mills.

On 17-5-1993 the petitioner union entered 18(1) settlement agreement with the respondent management whereby the petitioner union has

agreed that it will not raise any dispute and also will not file any case as against the management with regard to date of joining of 25 workmen, until the management proceeds with 24 hours continuous operation of the mill. After signing of the above settlement agreement, the respondent continued with 24 hours continuous operations of the mill for some years. This being so, the respondent with effect from 28-8-2005 unilaterally and arbitrarily terminated the above settlement agreement without intimating the petitioner union and thereby stopped the 24 hours continuous operation of the mills. Hence, the petitioner union is not bounded by the terms and conditions of the aforesaid agreement. As such the plea of the respondent that the petitioner cannot raise any dispute with regard to their date of joining belatedly and that too contrary to the agreed terms of the settlement agreement will not arise. Further one S. Kumar, R. Jeevanandam, Adiseshan, Munisamy and Sridharan were appointed in the Bharathi Mills on 3-5-1986 and their services were regularised on 1-8-1995 though the said workmen were regularised on 1-8-1995, their date of joining was entered as 3-5-1986. Thus it is evident that the act of the respondent in the case on hand by not considering the actual date of joining of the said 17 workmen is illegal, unjust and not proper. Hence, the industiral dispute is filed directing the respondent to correct the date of joining of the said workmen from 26-5-1993 to their respective original date of appointment as mentioned in the petition in all the service records and other incidental records maintained by the respondent management.

3. In the counter statement, the respondent has stated as follows:

The practice of respondent mill is that on requirement any person is employed as gate casuals first and then only on regular requirement become a temporary employee and then only can be confirmed. In cases of all the abovesaid 25 workmen, they were gate casuals and they were regularised in the services as per 18(1) settlement, dated 17-3-1993 with effect from 26-5-1993 as the mills required additional hands due to implementation of 24 hours working per day and for 7 days in a week as against 22 ½ hours per day and 6 days a week. Therefore, they were regularised as a goodwill gesture.

The petitioners are claiming to consider the date of entry mentioned in the ESI card as the date of confirmation for all other purposes and records. The ESI card is issued under the ESI Act and the same yardstick under which a worker is brought under the ambit of the ESI Act cannot be in blanket and blindly applied to all records not covered by the ESI Act. The ESI card that the petitioners rely on and base their whole claim is issued even to temporary workers, contract labourers and casual labourers. Such temporary workers, contract labourers and casual labourers cannot claim any rights based on the ESI card except those that are envisaged in the Act.

The very basic details, such as name, department, category, token number, father's name, date of birth and date of entry of each and every one of the workmen of the respondent mills, as per the records of the respondent mills are reproduced in each payslip of such workmen. Each and every one of the petitioners, who have raised the dispute have put in service of more than twenty years and have received and checked and have been satisfied with the entries in their respective payslips for all these years. The petitioners are estopped from now raising any dispute over the entries made in the pay slip and reproduced in the list with permanent numbers.

Further as per the practice of the respondent mills, each of the petitioners will have to submit service and identification agreement and gratuity nomination. Each of the petitioners have signed and submitted the service and identification agreements and gratuity nominations. Only based on the information given by the petitioners themselves, the entries have been made in the respondent mills records. The petitioners have not claimed that they themselves have given the date of entry wrongly. Hence, the petitioners are estopped from claiming such a relief. Hence, the respondent prays for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondent, RW.1 and RW.2 were examined and Ex.R1 to Ex.R7 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

The contention of the petitioner union is that the abovesaid workmen worked continuously for more than 240 days of every year in the respondent mills without any sort of black mark whatsoever and as such ranging from the year 1986 to 1988, the said employees were covered under the ESI Scheme and

ESI Identity Card also issued to them in this regard and on 1-4-1991 they were covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1956 and separate provident fund account number was given to each and every employee and thereafter provident fund contributions were deducted from the salary of the employees and on 26-5-1993 the respondent management confirmed the services of the said workmen, however, the date of joining the said workmen were entered into the service records as 26-5-1993 instead of their respective original date of appointment, which mentioned in the petition, in the respondent mills. In order to prove the said version, the President of the petitioner union was examined as PW.1 and marked Ex.P1 to Ex.P10. Ex.P1 is the copy of the payslip and Ex.P2 is the copy of the ESI card of the workmen. As per Ex.P2, the date of joining of the each of the workmen is as follows:

1.	R. Balasegar	—	6-6-1981
2.	S.Srinivasan	—	6-6-1981
3.	S. Nagasundaram	—	11-10-1982
4.	P. Paramasivam	—	11-11-1983
5.	M. Kalyanasundaram	—	6-6-1981
6.	M.Thanappan	—	11-12-1983
7.	V. Kothandapani	—	6-6-1981
8.	V. Veeraselvam	—	20-10-1982
9.	R. Munisamy	—	1-6-1985
10.	R. Janakiraman	—	10-8-1984
11.	K. Neelakandan	—	1-1-1987
12.	M. Patturaja Samuel	—	30-12-1983
13.	S. Kasinathan	—	10-10-1981
14.	K. Kalianam	—	20-11-1984
15.	E. Kalidass	—	11-11-1983
16.	M. Chandirasegaran	—	10-10-1984
17.	P. Vinayagamurthy	—	30-4-1986
18.	S. Natarajan	—	7-6-1985
19.	K. Mannakatty	—	30-4-1984
20.	T. Veerappan	—	12-12-1983
21.	M. Ramesh	—	1-6-1986
22.	M. Jayavelu	—	10-10-1986
23.	K. Udayakumar	—	10-10-1979
24.	K. Kaliamurthy	—	26-1-1984
25.	S. Subramanian	—	6-7-1985

But the date of joining of all the abovesaid workmen has been mentioned as 26-5-1993, as could be seen from the copy of the payslip of the said workmen.

7. The learned counsel for the respondent has stated that the petitioners are claiming to consider the date of entry mentioned in the ESI card as the date of confirmation for all other purposes and records and the ESI Card is issued under the ESI. Act and the same yardstick under which a worker is brought under the ambit of the ESI Act cannot be in blanket and blindly applied to all records not covered by the ESI Act and the ESI card that the petitioners rely on and base their whole claim is issued even to temporary workers, contract labourers and casual labourers and such temporary workers, contract labourers and casual labourers cannot claim any rights based on the ESI card except those that are envisaged in the Act. He further submitted that all the employees are given individual ESI Cards by the ESI Corporation, in which the date of entry into the mills is given as per the information proved by the management and this does not mean that they have entered to the mills as casuals and hence he denied that the date of entry as per the ESI. Identity card is liable to be taken as date of confirmation. In order to prove his claim, the Security Officer of the respondent mill was examined as RW.1.

8. On the side of the respondent, the Branch Manager of ESI Corporation was examined as RW.2. RW.2 in his evidence has deposed that the ESI Card will be issued to the workmen, who is Casual Labour, temporary or permanent workmen, those who are getting the salary up to ₹ 15,000 per month as per the request of the management and the management will send the declaration form. RW.2 further deposed that the ESI Card will be issued even to the Casual Labourers, who are working for more than three months and even if the particular workman discontinue his service, the same number will be continued even after he rejoins in the service and the date of joining already mentioned in the ESI card will continue.

9. RW.2 further stated that it is the respondent management, who is custodian of the attendance records relating to its employees and only seeing upon that, one can find out whether the workmen worked 240 days in a year or not. He also stated that based upon the information furnished by the respondent management alone, the ESI card was issued by the ESI Corporation.

10. The learned counsel for the petitioner has submitted that on 17-5-1993 the petitioner union entered an 18(1) settlement agreement with the respondent management whereby the petitioner union has agreed that it will not raise any dispute and also will not file any case as against the management with regard to the date of joining of 25 workmen, until the

management proceeds with the 24 hours continuous operation of the mill and in other words, the main core of the agreement is that the trade union will not raise any dispute with regard to the date of joining *i.e.,* 26-5-1993 of 25 workmen, only if the management carries on 24 hours continuous operations of the mill continuously *i.e.,* without any interruption and after the signing of the above settlement agreement, the respondent continued with 24 hours continuous operations of the mill for some years and this being so, the respondent with effect from 28-8-2005 unilaterally and arbitrarily terminated the above settlement agreement without intimating the petitioner union and thereby stopped 24 hours continuous operation of the mills and when the petitioner union asked the management as to the reason for unilateral termination of the above settlement agreement, the respondent gave vague and evasive reply to them and aggrieved by this, the petitioner union raised the industrial dispute with regard to the date of joining of the above workmen. The learned counsel for the petitioner relied upon the following decision to support his claim:-

2001(3) LLJ 698:

"I have considered the submissions which have been urged on behalf of the petitioner. Emphasis has been placed on the submission that the workers were engaged from time to time as temporaries depending upon the exigencies of the work. The fact which emerges from the record is that these workmen were engaged for well over a decade, and by the time the Award of the Industrial Court came to be passed, for two decades. The workmen, even if they did not complete the requirement of 240 days service, during the period 1986 to 1991, as was the submission of the petitioner before the Industrial Court, there was no denial of the fact that they had rendered long service as temporary workers, since they originally joined between the years 1979 to 1981. The company failed to produce on the record material or documents in its possession as regards the extent of work which was performed between 1979 and 1986. Workmen who were junior to the workers in question came to be regularised in service. The workers were denied the benefit of the conditions of service which were allowed to permanent workers and they had to work as temporaries, on paltry wages. The work which was performed by the temporary workers was of the same nature as the work performed by permanent workmen. For long years, these workers continued as temporaries only to be deprived of the security of service and the conditions of service allowed to permanent workers. The role of the petitioner, even after the take over under a Parliamentary enactment was not what is envisaged for the State as model employer. In these circumstances, the award of the Industrial Tribunal cannot be faulted.

11. *Per contra,* the contention of the learned counsel for the respondent is that the settlement is valid until replaced by a new settlement or an Award of the court and in the case on hand, no such new settlement or Award has come into force and hence the 18(1) settlement, dated 17-5-1993 is still in existence and binding on the petitioner. In order to support his claim, he relied upon the following decision:

2009 STPLE (LE) 42501:

Gujarat Agricultural University Vs. Ali Gujarat Kamdar Karamachari Union (S.C.)

"It is an admitted position that no new settlement has been entered between the employer and the workmen subsequently nor any award has replaced the settlement dated August 22, 1980 continues to regulate the conditions of service of the workmen covered thereby. The contract of service or the conditions of service provided in the settlement holds the field unit new lawful settlement is brought into being.".

12. The primary document which contains the date of joining of every workman in an establishment is the Muster Roll and the Production Book Register. As such in order to prove the factum of employment of 25 workmen in the respondent management, the petitioner had summoned the respondent to produce the Muster Roll and the Production Book Register in respect of the said workmen. However, the respondent has not produced the same and has stated that it was damaged. RW.1 has marked the payslips of the workmen as Ex.R2, Copy of the Nomination Forms of the workmen as Ex.R3, Copy of the standing orders for the Employees of Sri Bharathi Mills Limited as Ex.R4. RW.2 has marked the Authorisation Letter as Ex.R5, Insurance particulars in respect of the said workmen as Ex.R6 and Copy of the Form-5 and Form-6 as Ex.R7. Those documents are not in any way helpful to the case of the respondent. Under such circumstances, it is pertinent to refer section 114(g) of Indian Evidence Act which runs as follows:

"That evidence which could be and is not produced would, if produced, be unfavourable to the person withholds it."

Thus adverse inference could be drawn against such document for not producing the relevant documents before this court and consequently, the benefit goes in favour of the petitioner.

13. Though the petitioner union has mentioned the original date of joining in their claim statement, they have not produced any document to prove their claim. The particulars of date of birth and the date of joining are mentioned in the payslips under Ex.P1 and Ex.R2 issued to the said workmen of the respondent mill every month. According to the respondent management, the said workmen have not objected the particulars regarding the date of birth and date of entry, which are mentioned in the payslips for so many years, but now only, through the unions, they have objected the same and insisted the respondent management to enter the date of entry as found in ESI card. The ESI card is no doubt issued to the employees, those who are working in the respondent mill. But it is the contention of the management that the date of entry as found in ESI card cannot be taken into consideration as date of joining, since they could have discontinued from the service and joined later stage.

14. It is not denied by the respondent management that the ESI cards were issued to the petitioners, when they were working in the same establishment. When the petitioner says that the ESI card is issued at the instance of the respondent management, it is the duty of the respondent to prove that the said workmen were left service in a particular date and later joined in their establishment. In this case, the respondent has not taken any steps to bring any records to prove that the said workmen were discontinued their service after issuing the ESI cards to them.

15. The contention of learned counsel for the petitioner is that one S. Kumar, R. Jeevanandam, Adiseshan, Munisamy and Sridharan were appointed in the Bharathi Mills on 3-5-1986 and their services were regularised on 1-8-1995 and though the said workmen were regularised on 1-8-1995, their date of joining was entered as 3-5-1986 and thus it is evident that the act of the respondent in the case on hand by not considering the actual date of joining of the said 17 workmen is illegal, unjust and not proper.

16. In this regard, the learned counsel for the respondent has submitted that the said five workmen were working in the canteen for a very long time and the canteen in the mills is run by the mill management and for all purposes the said five canteen casuals were treated as mill employees and hence they were regularised during May 1986 and their work is regular and permanent in nature. But in order to prove the said claim, no document was filed on the side of the respondent.

17. The labour legislations were enacted to bring peace among the workers to bring more productivity in our country in the smooth circumstances. When the ESI cards were issued to the said workmen by the respondent management, the presumption is that the said workmen were working under the respondent management from the date of entry, which was found in ESI card. The industrial legislations were enacted to achieve the ambitions enshrined under Article 14 and 21 of Constitutional Law of India. The proposition laid down by the Hon'ble Supreme Court in the following cases are very relevant at this stage:

2005(3) L.L.N. 719 (Madras):

National Small Industries Corporation Limited, Chennai Versus Presiding Officer, I Additional Labour Court, Madras and another:

"The whole approach of industrial law is that the employer and employee do not stand on an equal bargaining position Industrial law recognises that the workers are in a weaker position than the employers who have financial resources, management skills, connections, etc., Hence the whole object of industrial law is to help the weaker section in the society (the workmen) and given them protection from exploitation. There can be no estoppel against a person, who accepts his designation as an apprentice, but later on raises a plea that in fact he was not an apprentice but was doing the work of a workman.".

1982 I LLJ 33 S.C.:

Workmen of M/s. Williamson Magor and Co. Limited Verus William Magor and Company Limited:

"This court in the case of KCP Employees Association, Madras *Vs.* Management of KCP Limited, Madras and other reported in (1977 1 L.L.J. 322) observed:

"In Industrial Law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt, on law and facts, if there be such doubt must go to the weaker section, labour. The Tribunal will dispose of the case making this compassionate approach but without over stepping the proved facts.".

The above proposition of law laid down by the Superior Courts were to be borne in mind to decide this case. The workers, who are from weaker section of the society, should not be exploited by the management, those who are in higher position. Hence, the relief sought by the petitioner union is reasonable and genuine and the change of date of entry of the said 25 workmen according to the date of joining mentioned in their ESI Identity Card is justifiable. Accordingly, this point is answered.

18. In the result, the industrial dispute is allowed and the respondent is hereby directed to correct the date of entry of said 25 workmen as per the ESI register and enter the same in the relevant registers of the respondent mill. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 13th day of December, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

———

List of witnesses examined for the petitioner :

PW.1 — 1-12-2011 K. Mohandass

PW.2 — 9-8-2012 Gopi Mohanan

List of witnesses examined for the respondent :

RW.1 — 28-9-2012 Gopimohan

RW.2 — 29-11-2011 Padmini

List of exhibits marked for the petitioner :

Ex.P1 — Copy of the payslip of the petitioner mentioned workmen.

Ex.P2 — Copy of the ESI card of the petition mentioned workmen.

Ex.P3 — Copy of the letter given by the petitioner union to the respondent, dated 4-12-2004.

Ex.P4 — Copy of the letter, dated 4-12-2004 given by the petitioner union to respondent.

Ex.P5 — Copy of the letter, dated 31-1-2005 given by the petitioner union to Labour Officer

Ex.P6 — Copy of the representation, dated 12-12-2006 given by the petitioner union to the Labour Officer.

Ex.P7 — Copy of the failure report, dated 18-7-2008.

Ex.P8 — Copy of the notification, dated 1-10-2008.

Ex.P9 — Copy of the information, dated 4-12-2009 obtained under RTI.

Ex.P10 — Authorisation letter, dated 7-7-2012

List of exhibits marked for the respondent :

Ex.R1 — Copy of the 18(1) settlement, dated 17-5-1993.

Ex.R2 — Copy of the standing order

Ex.R3 — Copy of the Payslips of 25 workmen

Ex.R4 — Copy of the gratuity nomination forms of the workmen.

Ex.R5 — Authorisation letter, dated 28-11-2012

Ex.R6 — Insurance particulars in respect of workmen.

Ex.R7 — Copy of the Form 5 and Form 6

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

———

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(*G.O. Rt. No. 52/AIL/Lab./J/2013, dated 15th April 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 51/2012, dated 23-11-2012 of the Labour Court, Karaikal in respect of the industrial dispute between the management of M/s. Vinayaga Missions Medical College and Hospital, Karaikal and one Thiru A. Aruldoss over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-91, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,
Under Secretary to Government (Labour).

———

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present: Thiru T. Mohandass, M.A, M.L.,
Presiding Officer,
Labour Court (Karaikal Camp).

Friday, the 23rd day of November, 2012.

I.D. No. 51/2012

A. Aruldoss,
No. 9, Periyapet,
Karaikal. .. Petitioner

Versus

The Management,
Vinayaga Missions Medical
College and Hospital,
Kottucherry, Karaikal .. Respondent

This industrial dispute coming on this day before me for final hearing in the presence of Thiru A. Alex Britto, Representative for the petitioner, Thiruvalaragal R. Ilancheliyan and R. Thilagavathi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No.122/AIL/Lab./J/2010, dated 8-6-2010 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Thiru A. Aruldoss against the management of M/s. Vinayaga Missions Medical College and Hospital, Karaikal over non-employment is justified or not?

(2) If justified, to what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his petition has stated as follows:

The petitioner was working as casual labour in the respondent hospital from 2006. He was discharging his duties to the satisfaction of the respondent hospital. He was working in the respondent hospital continuously for more than two years. When he reported for duty on 16-10-2009 after completing the leave period, he was denied the employment and he was orally informed that he was terminated from service. The respondent hospital has not obtained any explanation from the petitioner and they have not conducted any domestic enquiry. Further they have not issued any termination order to the petitioner. Hence, the petitioner approached the Conciliation Officer and since there was no settlement in the conciliation, the Conciliation Officer made his failure report and hence there was a reference of the dispute to this court.

3. The respondent in his counter has stated as follows:

The petitioner was a casual labour engaged on need based by the respondent and he did not report for work from 6-10-2009. He neither submitted any leave application nor got prior permission from the respondent management for his absence from work and he continued to be absent for more than 15 days.

It was reported in the news that the petitioner was arrested in a criminal case for the possession of dangerous weapons and he was also remanded for 15 days by the Judicial Magistrate, Karaikal. The petitioner was engaged only as a casual labour and he deserted his work for more than 15 days. He has also suppressed the fact about his involvement in a criminal case. Hence, the case of the petitioner being a voluntary act of desertion of work and the said desertion is purely for an act involving moral turpitude giving him work will not be conducive the interest of institution. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 was examined and Ex.P1 was marked. On the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R3 were marked.

5. *The point for consideration is:*

Whether the industrial dispute can be allowed?

6. *On this point:*

The petitioner was working as casual labour in the respondent hospital from 2006. He was discharging his duties to the satisfaction of the respondent hospital. He was working in the respondent hospital continuously for more than two years. When he reported for duty on 16-10-2009 after completing the leave period, he was denied the employment and he was orally informed that he was terminated from service. In order to prove his claim, the petitioner examined himself as PW.1.

7. The contention of the respondent is that the petitioner was a casual labour engaged on need based by the respondent and he did not report for work from 6-10-2009 and he neither submitted any leave application nor got prior permission from the respondent management for his absence from work and he continued to be absent for more than 15 days and hence the case of the petitioner is being a voluntary act of desertion of work.

8. The respondent has set up his case that it is admitted that the petitioner was an employee under them, but since has absented himself from 6-10-2009 without any notice or information or legal sanctioned leave, it will be presumed that he has abandoned the employment. It is pertinent to refer the following decisions, which are relevant to this case:

2002(4) L.L.N. 850:

State of Uttar Pradesh Vs. Presiding Officer, Labour Court, Agra and another:

"Abandonment of service - Even in the case of alleged abandonment, it is necessary for employer to conduct an enquiry, issue a charge sheet and notice to the workman concerned informing him that he is continuously absenting without any sanctioned leave - Admittedly this having not been done in this case the plea of employer about abandonment of service by workman not tenable."

1988 1 L.L.N. Page 259:

Gaurishankar Vishwakarma Vs. Eagle Spring Industries (P) Ltd., and others:

"Industrial dispute - Practice and procedure - Non-employment of workman - Case of employer is that workman has abandoned service - Even in case of abandonment of service employer has to give notice to workman and hold

an enquiry -It is for employer to prove such abandonment- Labour Court expected to follow judicial procedure should not depend on unverified statements to come to conclusion that it was workman who had refused to resume work."

9. Admittedly, the respondent has not given any notice to the workman either calling upon him to resume the duty or asking him to show cause as to why his services should not be terminated for his failure to resume his duties. No wonder, therefore, that there was no enquiry held before the termination of his service. The case of the respondent is that the petitioner had abandoned the service by refusing to come and to resume the work. It is difficult to accept this case, it is now well settled that even in the case of the abandonment of service, the employer has to give a notice to the workman, calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case, the respondent has done neither. It was for the employer to prove that the workman had abandoned the service.

10. To prove the abandoned the service, RW.1 has stated that it was reported in the news that the petitioner was arrested in a criminal case for the possession of dangerous weapons and he was also remanded for 15 days by the Judicial Magistrate, Karaikal and the petitioner was engaged only as a casual labour and he deserted his work for more than 15 days and he has also suppressed the fact about his involvement in a criminal case and hence, the case of the petitioner being a voluntary act of desertion of work and the said desertion is purely for an act involving moral turpitude giving him work will not be conducive the interest of institution. To prove the said fact, RW.1 has marked the copy of the letter sent by the S.I. of Police, Kottucherry Police Station to the Manager of the respondent management as Ex.R2. In Ex.R2, it has been stated that the petitioner has been arrested along with two others in connection with Cr. No.101/2009 under section 25(10) (a) of Arms Act, 1959 for the possession of dangerous weapons. RW.1 has also marked the copy of the newspaper as Ex.R3, wherein it has been stated that the petitioner along with two others have been arrested for the possession of dangerous weapons.

11. PW.1 in his cross-examination has admitted about the arrest of the police in connection with the abovesaid criminal. But he has marked the copy of the Judgment in CC No.35/2010, dated 6-10-2010 as Ex.P1. On perusal of Ex.P1, it is seen that since there is no evidence as against the petitioner with regard to the possession of dangerous weapons, he has been acquitted of the charges levelled against him. In this regard, it is pertinent to refer the following decision:—

1985(2) SCC Page 184:

Shankar Dass Vs. Union of India and another: "Probation of Offenders Act, 1958, S.12- Prosecution launched for breach of trust against an employee - Employee pleading guilty of charge before the criminal court - Employee convicted but released under Probation of Offenders Act - Employer dismissing the employee from service on the ground of conviction by criminal court for an offence - Dismissal from service on conviction amounts to disqualification - Dismissal from service is not disqualification attached to a conviction for an offence and the term disqualification applies to cases, where statues specifically provide for such a disqualification."

12. In the above judgment, the Hon'ble Supreme Court has held that though the employee has been convicted, since he has been released on Probation of Offenders Act, the dismissal from service is not disqualification attached to the said conviction for an offence. In the case on hand, though the petitioner has been arrested in a criminal case, he has been acquitted of the charge levelled against him vide Ex.P1, which has not been denied or challenged by the respondent. In the above circumstances, the contention of the learned counsel for the respondent that the involvement of the petitioner in a criminal case leads to dismissal from service, cannot be accepted.

13. Finally, the learned counsel for the respondent is that the petitioner was only a casual labour and he was engaged on need basis and hence there is no need to issue notice or conduct any domestic enquiry.

14. It is pertinent to point out that even a casual labour is considered to be an employee and as because the petitioner is a casual labour, he cannot be terminated from service without issuing notice or conducting any domestic enquiry as per the decisions held in 1970 Lab I.C. Elumalai *Vs.* Management of Concrete Piles India Limited, Madras and (1971) ILLJ Pilot Pen Co. Limited. In the above circumstances, the termination of the petitioner is bad in law and the same is liable to be set aside. But considering the facts and circumstances of the case, the petitioner is not entitled for any back wages. Accordingly, this point is answered.

15. In the result, the industrial dispute is partly allowed and the petitioner is entitled for reinstatement with continuity of service. However, he is not entitled for back wages and other service benefits. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 23rd day of November, 2012.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

List of petitioner's witness :

PW.1 — 25-7-2011 - Aruldoss

List of petitioner's exhibits:

Ex.P1 — Copy of the judgment in CC No.35/2010, dated 6-10-2010.

List of respondent's witness:

RW.1 — 14-10-2011 - S. Mohan, Personnel Officer of respondent hospital.

List of respondent's exhibits :

Ex.R1 — Authorisation letter, dated 12-10-2011

Ex.R2 — Copy of the letter sent by the S.I. of Police to the respondent, dated 15-2-2010.

Ex.R3 — Copy of the newspaper

T. Mohandass,
Presiding Officer,
Labour Court, Puducherry.

———

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(*G.O. Rt. No. 53/Lab./AIL/J/2013, dated 15th April 2013)*

NOTIFICATION

Whereas, an award in I.D. No. 81 of 2012, dated 30-10-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Proprietor, M/s. Pinnakkattu Enterprises, Mahe and one Thiru P. Shaji over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. Thammu Ganapathy,
Under Secretary to Government (Labour).

———

BEFORE THE LABOUR COURT AT PUDUCHERRY (MAHE CAMP)

Present : Thiru T. Mohandass, m.a., m.l.,
Presiding Officer, Labour Court.

Tuesday, the 30th day of October 2012

I.D. No. 81/2012

P. Shaji
Mangalam House, Puzhithala, Mahe . . Petitioner

Versus

The Proprietor,
Pinnakkattu Enterprises, Mahe . . Respondent

This industrial dispute coming on this day for final hearing before me in the presence of Thiru K. Viswan, Advocate for the petitioner, Thiru M.D.Thomas, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G.O. Rt. No. 130/AlL/Lab./J/2008, dated 23-7-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.,*

(1) Whether the dispute raised by Thiru Shaji against the management of M/s. Pinakkattu Enterprises, Mahe over non-employment is justified or not?

(2) If justified, what relief, the petitioner Thiru Shaji is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed.

2, The petitioner, in his claim statement, has averred as follows:

The petitioner was working in the respondent firm as salesman from January 1996. Initially his monthly salary was fixed at ₹ 1,500 and later it has been enhanced to ₹ 3,500. However in the year 2008, the salary of the petitioner was at 4,000 per month. The petitioner has made request to enhance the salary to an amount as given to one Nideesh, who was appointed in the year 2003 at the monthly salary of ₹ 5,000. The respondent showed his displeasure as to the demands of the legitimate salary and transferred the petitioner to branch office of the said firm. However he performed his duty without any default. As per the understanding of the petitioner and the respondent, ₹ 30 was agreed to pay as allowance per day. However there was unilateral refusal on the part of the respondent in disbursing the said allowance. Later the respondent initiated proceeding illegally and tried to deny the legitimate right of the petitioner.

When the petitioner made an attempt to bring high hand action of the respondent to the notice of the trade union leaders, the respondent chose to issue the show cause notice attributing utter falsehood. The respondent purposely refused to disburse the salary per month at the rate of ₹ 4,000 from March 2007 onwards and the arrears of daily

allowance from 1996 onwards. Hence, on 24-4-2008 the petitioner issued a notice demanding payment of arrears of salary and daily allowance and also demanding to reinstate him into service. There is unilateral refusal on the side of the respondent in providing employment to the petitioner. Hence, this industrial dispute is filed to reinstate him into service and for arrears of salary and daily allowance.

3. In the counter statement, the respondent has stated as follows:-

The petitioner was appointed in January 1996 for a monthly salary of ₹ 1,250 and subsequently it has been enhanced to ₹ 2,600 It is not true that in the year 2008 the salary of the petitioner was at ₹ 4,000 per month. In order to improve the business of the firm, the petitioner was transferred to the branch office. The petitioner has not performed his duty effectively. There was no understanding or agreement to pay ₹ 30 per day as allowance.

The petitioner has received salary up to 17-12-2007, but he refused to sign in the acquittance register from July 2007 onwards. The respondent constrained to issue a notice on 17-12-2007 as consequent to the show cause notice issued by this respondent. The petitioner admitted the receipt of ₹ 28,575 as advance from this respondent in front of Assistant Labour Officer and the leaders of his union. After discussion with the Assistant Labour Officer, union leaders and the petitioner, it is agreed by this respondent to pay ₹ 25,000 as full and final compensation. But the petitioner has not received the same from the respondent. It is learnt that the petitioner joined as a head load worker in Mahe region Head Load Workers and hence he had not received the amount and created troubles in order to get a termination from this respondent's firm. The petitioner is trying to obtain a huge amount from this respondent as compensation. Hence, they pray for dismissal of the industrial dispute.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondent, RW.1 was examined and Ex.R1 was marked.

5. *The point for determination is:*

Whether the industrial dispute can be allowed?

6. *On the point:*

There is no dispute that the petitioner was working with the respondent from the year 1996. The contention of the petitioner is that initially his monthly salary was fixed at ₹ 1,500 and later it has been enhanced to ₹ 3,500. However in the year 2008, the salary of the petitioner was at ₹ 4,000 per month and he has made request to enhance the salary to an amount as given to one Nideesh, who was appointed in the year 2003 at the monthly salary of ₹ 5,000 and the respondent showed his displeasure as to the demands of the legitimate salary and transferred the petitioner to branch office of the said firm and as per the understanding between him and the respondent, ₹ 30 was agreed to pay as allowance per day, however there was unilateral refusal on the part of the respondent in disbursing the said allowance and later he initiated proceeding illegally and tried to deny his legitimate right. In order to prove his, claim, the petitioner examined himself as PW.1.

7. The contention of the respondent is that the petitioner was appointed in January 1996 for a monthly salary of ₹ 1,250 and subsequently it has been enhanced to ₹ 2,600 and it is not true that in the year 2008 the salary of the petitioner was at ₹ 4,000 per month and in order to improve the business of the firm, the petitioner was transferred to the branch office and the petitioner has not performed his duty effectively and there was no understanding or agreement to pay ₹ 30 per day as allowance. In order to support his claim, the proprietor of the respondent enterprises was examined as RW.1. RW.1 has marked the wage register of his shop as Ex.R1. As per Ex.R1, the petitioner was getting a sum of ₹ 2,600 per month as salary till July 2007 and from August 2007, though the amount of ₹ 2,600 has been entered as against the name of the petitioner, his signature is not found place. In this regard, RW1 has stated that the petitioner has received the salary up to 17-12-2007, but he had refused to sign in the acquittance register from July 2007 onwards. The petitioner has not filed any document to prove that he was getting ₹ 4,000 per month from the year 2008. As per the wage register under Ex.R1, the name of the petitioner is found place till the month of December 2007 only. Hence, the contention of the petitioner that he was getting ₹ 4,000 per month from the year 2008 cannot be accepted.

8. The petitioner and the respondent in their evidence have not clearly stated whether the petitioner was terminated from service, or whether he abandoned the service and the reason for the same. The petitioner in his evidence has stated that he insisted about his enhancement of salary and prayed this court to reinstatement of service with arrears of salary. The petitioner has not stated about subsequent stage of enhancement of salary and why he has prayed for reinstatement of service. Likewise the respondent has also stated only about the salary

which has been given to the petioner and about refusal of salary by the petitioner from the month of July 2007 onwards.

9. On the side of the petitioner, the failure report given by the Labour Officer was marked as Ex.P5. In Ex.P5, it has been stated as follows:-

"Conciliation fixed on 18-3-2008. ... The employer stated that termination of worker is on 18-12-2007. The worker asked for enhancement of wages and not asked for batta. There is no such batta paid to any worker. The petitioner has not interested to do work. His performance is very poor. Then the employer has given a show cause notice, dated 12-11-2007 to the worker regarding the unsatisfactory performance and spreading gossips about the employer to others. The employer has given one month time to reply. But the worker has not given any reply. Then on 17-12-2007 the employer has given termination notice stating that the employer is ready to give termination benefit of ₹ 44,000. The worker has already indebted to the employer ₹ 28,575. The balance amount of ₹ 15,425 is ready to disburse.

Employer further stated that he is admitting 12 year service and his wages is ₹ 2,600 per month. Apart from ₹ 2,600 the employer has given extra amount in every month. Hence, the worker is getting ₹ 4,000 per month. As per wages register and service record, his wage is ₹ 2,600 only. Employer has stated that due to misunderstanding and ill-will, reinstatement is not possible. But he is ready to pay legal compensation.

The union representative stated that other workers are getting batta as like tea and travelling allowances. Legally the worker is entitled to ₹ 48,000. Union representative requested to give reasonable amount as compensation."

10. From Ex.P5, it can be seen that the allegation against the petitioner is that he has not discharged his duty to the satisfaction of the respondent and hence the respondent has given a show cause notice under Ex.P1, for which no reply has been sent by the petitioner and hence the respondent issued a termination order under Ex.P2. A perusal of Ex.P5 further reveals that since there is misunderstanding between the petitioner and the respondent, there is no possibility of reinstatement of the petitioner and the respondent was ready to pay ₹ 44,000 to the petitioner and since the petitioner has not agreed, the conciliation ended in failure.

11. According to the respondent, the performance of the petitioner was very poor and hence following the show cause notice, the petitioner was terminated from service. But before terminating the petitioner, the respondent has not framed any charges and not conducted the domestic enquiry by appointing an Enquiry Officer and without conducting the domestic enquiry, the termination of petitioner from service is not fair and in the above circumstances, considering the Ex.P5, this court has to come to the conclusion that the petitioner can be given monetary compensation.

12. On the side of the petitioner, the Labour Officer was examined as PW.2. PW.2 in his evidence has marked Ex.P5 conciliation report, Ex.P6 petition given by Mahe Shop and Workers Union, Ex.P7 is the institution regarding non-acceptance of explanation and Ex.P8 is the Conciliation notice issued to the petitioner. During the cross-examination, PW.2 has stated that the petitioner has completed 11 years of service and he is eligible for one month salary for one year and if one employee is terminated, he is entitled for termination benefits.

13. Though the petitioner has stated that he performed his duty to the satisfaction of the respondent, the respondent has stated that the petitioner has not performed his duty effectively.

14. The petitioner has filed the industrial dispuste for his reinstatement with back wages and the arrears of salary from March 2007 to October 2008 and the arrears of day allowance at ₹ 30 from 1996 onwards. But there was misunderstanding between the petitioner and the respondent management and in the above circumstances, if any order passed by this court to reinstate him into service, there will not be any smooth relationship between them. Hence, I feel that instead of reinstate him into service, he can be given monetary compensation as already stated.

15. There is no dispute that the petitioner was working in the respondent company for more than 10 years. PW.2 in his evidence has deposed that the petitioner is eligible for one month salary for one year and if one employee is terminated, he is entitled for termination benefits. Considering the age and the services rendered in the respondent company, a sum of ₹ 1,00,000 can be awarded to the petitioner towards monetary compensation. Accordingly, this point is answered.

16. In the result, the industrial dispute is partly allowed and the petitioner is not entitled for reinstatement with back wages and other benefits. However, the respondent is directed to pay a sum of ₹ 1,00,000 (Rupees one lakh only) towards the monetary compensation to the petitioner. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this 30th day of October, 2012.

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

———

List of witnesses examined for the petitioner :

PW.1 — 21-10-2010 Shaji

PW.2 — 10-10-2011 Monoj Kumar

List of witness examined for the respondent :

RW.1 — 24-11-2011 Mathew

List of exhibits marked for the petitioner :

Ex.P1 — Show cause notice issued by the respondent to the petitioner.

Ex.P2 — Termination order issued by the respondent, dated 17-12-2007.

Ex.P3 — Copy of lawyer's notice sent by the petitioner's counsel, dated 24-4-2008.

Ex.P4 — Reply notice sent by the respondent's counsel, dated 12-6-2008.

Ex.P5 — Conciliation report

Ex.P6 — Petition given by Mahe Shop and Workers' Union.

Ex.P7 — Institution regarding non-acceptance of explanation.

Ex.P8 — Conciliation notice issued to the petitioner.

Ex.P9 — Letter, dated 7-2-2008 given by the respondent.

Ex.P10 — Notice sent by the respondent

List of exhibits marked for the respondent :

Ex.R1 — Wage register

T. MOHANDASS,
Presiding Officer, Labour Court,
Puducherry.

GOVERNMENT OF PUDUCHERRY

HOME DEPARTMENT

(*G.O. Ms. No. 20, dated 8th April 2013)*

NOTIFICATION

Whereas, a separate Police Station for the Protection of Civil Rights (PCR) Cell has been set up in the Puducherry having jurisdiction over the whole of the Pondicherry region of the Union Territory *vide* G.O. Ms. No. 47, dated 1-6-1983 of Home Department, Government of Puducherry;

And whereas, Government of India has subsequently sanctioned 11 temporary non-gazetted posts for setting up of new Protection of Civil Rights (PCR) Cells at Karaikal and Yanam regions for implementation of Protection of Civil Rights Act, 1955 and the order in this regard has been issued *vide* G.O. Ms. No. 6, dated 23-1-1987 of Home Department, Government of Puducherry;

And whereas, the said Protection of Civil Rights (PCR) Cells set up at Karaikal and Yanam have started functioning accordingly and it has become therefore necessary that the said Cells are required to be declared as Police Stations under the Code of Criminal Procedure, 1973;

Now, therefore, in exercise of the powers conferred by clause(s) of section 2 of the Code of Criminal Procedure, 1973 (Central Act 42 of 1974), the Lieutenant-Governor, Puducherry is pleased to declare that the PCR Cells at Karaikal and Yanam regions shall be the Police Stations from the date of their functioning with extent of jurisdiction as detailed below:

Sl. No.	Name of the Police Station	Jurisdiction	Controlling Officer
(1)	(2)	(3)	(4)
1	PCR Cell Police Station, Karaikal	Whole of Karaikal region	Superintendent of Police (PCR Cell).
2	PCR Cell Police Station, Yanam	Whole of Yanam region	Do.